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CITY AND COUNTY OF SAN FRANCISCO  
AND JUSTIN ERB

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CAROL WALKER,

Plaintiff,

vs.

CITY AND COUNTY OF SAN  
FRANCISCO, SERGEANT JUSTIN ERB;  
and DOES 1 through 20, inclusive,

Defendants.

Case No. 16-cv-06053 EDL

**DEFENDANT JUSTIN ERB'S ANSWER TO  
COMPLAINT FOR WRONGFUL DEATH AND  
VIOLATION OF CIVIL RIGHTS**

**DEMAND FOR JURY TRIAL**

**I. INTRODUCTION**

Defendant Justin Erb ("Defendant") hereby responds to plaintiff's Complaint ("Complaint").

1. In response to this paragraph, defendant denies the allegations.

2. Fearing for his life, and the lives of his partner and the public, defendant discharged his firearm at a suspected car thief who, in an attempt to evade arrest, recklessly drove a vehicle in such a way as to endanger him and others around him. Witnesses stated that the suspect attempted several times to run over police officers.

## II. JURISDICTION AND VENUE

3. In response to this paragraph, defendant lacks information sufficient to enable him to form a belief as to the truth of the allegations therein, and, on that basis, defendant denies the allegations.

4. In response to this paragraph, defendant lacks information sufficient to enable him to form a belief as to the truth of the allegations therein, and, on that basis, defendant denies the allegations.

5. In response to this paragraph, defendant lacks information sufficient to enable him to form a belief as to the truth of the allegations therein, and, on that basis, defendant denies the allegations.

## III. PARTIES

6. In response to this paragraph, defendant lacks information sufficient to enable him to form a belief as to the truth of the allegations therein, and, on that basis, defendant denies the allegations.

7. Admitted.

8. Defendant denies the allegations contained in this paragraph. Defendant is employed by the San Francisco Police Department.

9. Defendant admits all allegations in this paragraph except those contained in the final sentence of this paragraph, the truth of which defendant denies.

10. Defendant admits all allegations in this paragraph except those contained in the final sentence of this paragraph, the truth of which defendant lacks information sufficient to enable it to form a belief of its truthfulness or falsity, and on that basis denies the allegation.

## IV. FACTS

11. On May 19, 2016, Jessica Williams was engaged in a felony crime and was under the extreme influence of methamphetamine, at which time San Francisco police officers attempted to arrest her, whereupon she, in an attempt to evade arrest, recklessly drove a vehicle in such a way as to endanger defendant Sergeant Erb and others, and according to witnesses attempted to run over the police officers. Fearing for his life, and the lives of his partner and the public, defendant Sergeant Erb

1 discharged his firearm at the vehicle in a justified attempt to stop her from fleeing and/or killing or  
2 seriously wounding himself or others.

3 12. In response to this paragraph, defendant lacks information sufficient to enable it to form  
4 a belief as to the truth of the allegations therein, and, on that basis, defendant denies the allegations.

5 13. In response to this paragraph, defendant lacks information sufficient to enable it to form  
6 a belief as to the truth of the allegations therein, and, on that basis, defendant denies the allegations.

## 7 **V. CLAIMS FOR RELIEF**

### 8 **FIRST CLAIM FOR RELIEF**

#### 9 **42 U.S.C. Section 1983-Excessive Force (Against Defendant Justin Erb)**

10 14. Defendant hereby incorporates by reference all previous responses as if set forth in full.

11 15. In response to this paragraph, defendant lacks information sufficient to enable him to  
12 form a belief as to the truth of the allegations therein, and, on that basis, defendant denies the  
13 allegations.

14 16. Defendant denies the allegations contained in this paragraph as it is not a complete  
15 statement of the law. Persons who commit violent felonies, fail to surrender to arrest, or pose a serious  
16 threat to life or limb, do not enjoy the same Fourth Amendment protections as law-abiding citizens.

17 17. Defendant denies the allegations contained in this paragraph as it is not a complete  
18 statement of the law. Persons who commit violent felonies, fail to surrender to arrest, or pose a serious  
19 threat to life or limb, do not enjoy the same Fourteenth Amendment protections as law-abiding  
20 citizens.

21 18. Defendant denies the allegations contained in this paragraph.

22 19. Defendant denies the allegations contained in this paragraph. Defendant Erb's actions  
23 were factually and legally justified, and done in good faith.

24 20. Defendant denies the allegations contained in this paragraph. Defendant Erb's actions  
25 were factually and legally justified, and done in good faith.

26 21. In response to this paragraph, defendant denies the allegations. Defendant Erb's  
27 actions were factually and legally justified, and done in good faith.

22. Defendant is unclear what this paragraph alleges, but denies the allegations contained in this paragraph. Defendant Erb's actions were factually and legally justified, and done in good faith.

23. Defendant denies the allegations contained in this paragraph. Defendant Erb's actions were factually and legally justified, and done in good faith.

24. In response to this paragraph, defendant lacks information sufficient to enable it to form a belief as to the truth of the allegations therein, and, on that basis, defendant denies the allegations.

25. Defendant denies the allegations contained in this paragraph.

26. Defendant denies the allegations contained in this paragraph. Defendant is informed and believes that no constitutional right was violated, and if there was a violation, such right was not sufficiently established. Defendant Erb's actions were factually and legally justified, and done in good faith.

27. Defendant denies the allegations contained in this paragraph. Defendant is informed and believes that no constitutional right was violated, and if there was a violation, such right was not sufficiently established. Defendant Erb's actions were factually and legally justified, and done in good faith.

28. In response to this paragraph, defendant lacks information sufficient to enable him to form a belief as to the truth of the allegations therein, and, on that basis, defendant denies the allegations.

29. Defendant denies the allegations in this paragraph.

30. Defendant denies the allegations in this paragraph.

## **SECOND CLAIM FOR RELIEF**

### **Wrongful Death (Against Defendant Justin Erb)**

31. Defendant hereby incorporates by reference all previous responses as if set forth in full.

32. In response to this paragraph, defendant lacks information sufficient to enable him to form a belief as to the truth of the allegations therein, and, on that basis, defendant denies the allegations.

33. Defendant denies the allegations in this paragraph.

34. In response to this paragraph, defendant denies any allegations of negligence and lacks information sufficient to enable it to form a belief as to the truth of the allegations therein, and, on that basis, defendant denies the allegations.

35. In response to this paragraph, defendant lacks information sufficient to enable it to form a belief as to the truth of the allegations therein, and, on that basis, defendant denies the allegations.

36. Defendant denies the allegations in this paragraph.

37. In response to this paragraph, defendant lacks information sufficient to enable it to form a belief as to the truth of the allegations therein, and, on that basis, defendant denies the allegations.

### **THIRD CLAIM FOR RELIEF**

**Respondeat Superior (Against Defendant San Francisco)**

38. Defendant hereby incorporates by reference all previous responses as if set forth in full.

39. Defendant does not understand the allegations in this paragraph, but denies that he or the City was negligent or careless. As to the remaining parts of this paragraph, defendant lacks information sufficient to enable it to form a belief as to the truth of the allegations therein, and, on that basis, defendant denies the allegations.

## VI. PRAYER

Responding to the allegations in plaintiff's prayer for relief, defendant objects to them and as to those that make allegations defendant lacks information sufficient to enable it to form a belief as to the truth of the allegations in those paragraphs, and, on that basis, defendant denies the allegations.

Defendant further denies any allegation inadvertently unaddressed, and any and all prayer for damages.

## JURY DEMAND

Defendant joins in plaintiff's request for a jury trial.

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1 **SIXTH AFFIRMATIVE DEFENSE**

2 (Denial of Damages)

3 Defendant denies that plaintiff has been damaged in any sum or sums, or otherwise, or at all,  
4 by reason of any act or omission of any defendant.

5 **SEVENTH AFFIRMATIVE DEFENSE**

6 (Immunity)

7 Defendant alleges the provisions of the California Tort Claims Act of the California  
8 Government Code (Government Code §810 *et seq.*) as a measure of the duty of the City and County of  
9 San Francisco and its employees.

10 **EIGHTH AFFIRMATIVE DEFENSE**

11 (Immunity)

12 Defendant claims the immunities under the applicable provisions of the California Government  
13 Code, including without limitation sections 820.8, 830-835.4.

14 **NINTH AFFIRMATIVE DEFENSE**

15 (Barred by Tort Claims Act and Failure to file Claim)

16 Defendant alleges that to the extent the Complaint includes allegations within the scope of the  
17 California Tort Claims Act, the Complaint is barred by the following provisions of the California Tort  
18 Claims Act: Government Code sections: 815; 815(b); 815.2(b); 815.4; 818.2; 818.4; 818.6; 818.7;  
19 818.8; 820; 820(b); 820.2; 820.8; 821.2; 821.4; 821.6; 821.8; 822; 822.2; 830.2; 830.4; 830.6; 830.8;  
20 830.9; 831; 831.2; 831.4; 835.4; 840; 840.6; 844.6; 845; 845.2; 845.4; 845.8; 850; 80.2; 850.4; 854.8;  
21 855; 855.2; 855.4; 855.6; 855.8; 856; 856.2; 956.4.

22 **TENTH AFFIRMATIVE DEFENSE**

23 (Good Faith)

24 Defendant alleges that the employees, officials and agents of defendant were at all times  
25 material hereto acting with both subjective and objective good faith, such that any claim for relief that  
26 plaintiff may have is barred by law.

1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 (Frivolous Action)

3 Plaintiff's maintenance of this action is frivolous, vexatious and unreasonable, thereby entitling  
4 defendant to sanctions and appropriate remedies (including without limitation attorney's fees) against  
5 plaintiff.

6 **TWELFTH AFFIRMATIVE DEFENSE**

7 (Unclean Hands)

8 The Complaint and each cause of action therein are barred by the doctrine of unclean hands.

9 **THIRTEENTH AFFIRMATIVE DEFENSE**

10 (Proper Conduct)

11 As a separate and affirmative defense to the Complaint and to each and every allegation  
12 contained therein, defendant alleges that at all times and places mentioned in the Complaint, defendant  
13 acted without malice and with a good faith belief in the propriety of its conduct.

14 **FOURTEENTH AFFIRMATIVE DEFENSE**

15 (Acting in Good Faith)

16 As a separate and affirmative defense to the Complaint and to each and every allegation set  
17 forth therein, defendant alleges that at all times mentioned in the Complaint, defendant performed and  
18 discharged in good faith each and every obligation, if any, owed to plaintiff.

19 **FIFTEENTH AFFIRMATIVE DEFENSE**

20 (Privilege)

21 As a separate and affirmative defense to the Complaint and to each and every allegation  
22 contained therein, defendant alleges that its conduct at all times material herein was privileged and/or  
23 justified under applicable state and Federal law.

24 **SIXTEENTH AFFIRMATIVE DEFENSE**

25 (Immunities)

26 As a separate and affirmative defense to the Complaint and to each and every allegation  
27 contained therein, defendant asserts the various immunities conferred upon it pursuant to the  
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1 California Government Code, and other applicable provisions of law including, but not limited to,  
2 those contained in Division 3.6 of Title 1 of the California Government Code.

3 **SEVENTEENTH AFFIRMATIVE DEFENSE**

4 (Public Liability Act)

5 Defendant alleges the provisions of the Public Liability Act of the California Government  
6 Code as the sole and exclusive measure of defendant's duties and liabilities in this action.

7 **EIGHTEENTH AFFIRMATIVE DEFENSE**

8 (Immunity: Exemplary Damages)

9 Defendant alleges that San Francisco, as a public entity, is immune from liability for  
10 exemplary damages herein pursuant to Section 818 of the California Government Code.

11 **NINETEENTH AFFIRMATIVE DEFENSE**

12 (Decedent's Conduct Reckless and Wanton)

13 Defendant alleges that at all times mentioned in plaintiff's Complaint herein, decedent acted in  
14 a careless, reckless, wanton and negligent manner in and about the matters set forth in the Complaint;  
15 that such careless, reckless, wanton and negligent conduct proximately contributed to the injuries and  
16 damages, if any, sustained or claimed by plaintiff; that as a consequence, plaintiff's claim is barred.

17 **TWENTIETH AFFIRMATIVE DEFENSE**

18 (Discretionary Act Immunity)

19 Defendant alleges that the act or omissions which plaintiff claims give rise to liability in this  
20 case were within the discretion of San Francisco employees acting within the course and scope of their  
21 employment and, as a result, plaintiff's claim is barred by the discretionary act immunity contained in  
22 California Government Code section 820.2 and its related provisions.

23 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

24 (Privilege)

25 Defendant alleges that if any force was used by defendant against the decedent herein, said use  
26 of force was the lawful exercise of the right of self-defense and defense of the public and privileged by  
27 law, and any recovery pursuant to said use of force is barred.

1 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

2 (Justified Use of Force)

3 The Complaint and each cause of action therein is barred because the use of force against the  
4 decedent by the employees of defendant, if any, was privileged and justified.

5 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

6 (Comparative Negligence)

7 Defendant alleges by way of a plea of comparative negligence that decedent was negligent in  
8 and about the matters and activities alleged in the Complaint; that decedent's negligence contributed to  
9 and was a proximate cause of decedent and/or plaintiff's alleged injuries and damages, if any, or was  
10 the sole cause thereof; and that if plaintiff is entitled to recover damages against defendant by virtue of  
11 the Complaint, defendant prays that the recovery be diminished or extinguished by reason of the  
12 negligence of the decedent in proportion to the degree of fault attributable to the decedent.

13 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

14 (Arrest)

15 Defendant alleges that if any force was used to effect the arrest of the decedent herein by the  
16 Doe defendants, such force was authorized and privileged pursuant to Sections 835 and 835a of the  
17 California Penal Code and as a proximate result thereof, plaintiff is barred from any recovery herein  
18 for any alleged injury or damage if any there were.

19 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

20 (Resisting Arrest)

21 Defendant alleges that decedent was under a duty pursuant to Section 834a of the California  
22 Penal Code to refrain from using force or a weapon to resist her arrest; that decedent breached her duty  
23 even though she knew or by the exercise of reasonable care should have known that she was being  
24 arrested by a peace officer; that as a direct and proximate result of decedent's breach of this duty  
25 plaintiff is barred from recovery for any loss or damage plaintiff may have incurred, if any there be.  
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1 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

2 (Plaintiff/Decedent Assaulted Police)

3 Defendant alleges that at all times mentioned in plaintiff's Complaint herein, decedent  
4 willfully, wantonly, maliciously, and unlawfully committed a violent assault on the persons of the  
5 arresting officers; that it became and was necessary to use force on the person of the decedent to  
6 defend said arresting officers from said violent assault on their persons; that the injuries, if any, and  
7 damages, if any, incurred by plaintiff were proximately caused by the necessary use of said reasonable  
8 force on the person of decedent and not otherwise; and that by reason of decedent instituting said  
9 vicious and violent assault on the persons of said arresting officers, decedent's failure and refusal to  
10 desist from continuing said assault, and the consequent necessity to use reasonable force to defend said  
11 arresting officers from said assault, plaintiff's claim, if any, is barred by law.

12 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

13 (Prevent Injury/Escape)

14 Defendant alleges that no more force was used on decedent's person than was necessary to  
15 effect detention, overcome any resistance thereto, prevent escape there from, and prevent injury to the  
16 officers and the public and to facilitate and safeguard a valid police investigation.

17 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

18 (Qualified Immunity)

19 Defendant alleges that this lawsuit is barred, in whole or in part, by the doctrine of qualified  
20 immunity.

21 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

22 (Immunity from Injury Caused by Person Resisting Arrest)

23 Defendant alleges that, pursuant to California Government Code section 845.8, defendant is  
24 immune from liability as a matter of law for injury caused to plaintiff by a person resisting arrest.  
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1 **THIRTIETH AFFIRMATIVE DEFENSE**

2 (Failure to State Relief Under 42 U.S.C. 1983)

3 Defendant alleges that plaintiff has failed to allege facts in the Complaint sufficient to state a  
4 claim for relief under 42 U.S.C. 1983 against defendant, its agents, employees and particularly its  
5 police officers.

6 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

7 (City and County of San Francisco Not a Proper Party)

8 Defendant alleges that plaintiff has failed to allege sufficient, specific facts against defendant  
9 CCSF, a public entity, to state a claim for relief under 42 U.S.C. §§ 1983 or 1985.

10 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

11 (Mutual Combat)

12 Defendant alleges that decedent had full knowledge of the risks involved in the mutual combat  
13 activity in which she engaged and set forth in the Complaint herein; that decedent voluntarily assumed  
14 all the risks incident to the activity engaged in at the time and place mentioned in said Complaint, and  
15 that the loss or damage, if any, sustained by plaintiff were caused by said risks, which were accepted  
16 and voluntarily assumed by decedent when she engaged in said activity.

17 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

18 (Self Defense)

19 Defendant alleges by way of a plea of self-defense that defendant employees honestly and  
20 reasonably believed that decedent was about to inflict harm upon them and that the use of force, if any,  
21 was done reasonably and in self-defense.

22 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

23 (No Breach of Duty)

24 Defendant further alleges that it is not liable for any cause of action based in negligence, as  
25 they have breached no duty of care owed to plaintiff.

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WHEREFORE, Defendant prays for judgment as follows:

- Defendant respectfully demands a jury trial.

Dated: February 8, 2017

By: /s/ Sean F. Connolly  
SEAN F. CONNOLLY

Answer to Complaint  
Walker v. CCSF, et al.; No. 16-cv-06053 EDL